SUPREME COURT, U.S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-935

THE CHICAGO BOARD OF HEALTH, and DR. ERIC OLDBERG, SAMUEL A. GOLDSMITH, WALTER MULLADY, DR. MARY KELLY MULLANE, DR. ROBERT STEPTO, EDWARD W. HUESEY, and MICHAEL ROSENBERG, Individual Members of the Chicago Board of Health,

Petitioners,

vs.

FRIENDSHIP MEDICAL CENTER, LTD. and T. R. M. HOWARD,

Respondents.

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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I.

THIS COURT'S HOLDING THAT THE RIGHT OF PRIVACY INCLUDES THE ABORTION DECISION ASSUMES THAT ABORTIONS ARE PERFORMED UNDER SAFE, CLINICAL CONDITIONS.

Respondents' Brief in Opposition to the Petition for a Writ of Certiorari makes it readily apparent that the

definition of the right of privacy is of decisional magnitude in this case. Predictably, respondents argue that in *Roe* v. *Wade,* 410 U.S. 113 (1973), this Court so defined the woman's right of privacy as to preclude the challenged Board of Health regulations for Abortion Clinics. It is submitted that a right of privacy of such breadth passes well beyond the penumbras of the specific Constitutional guarantees from which the right is derived. Review by this Court is necessary to prevent the unwarranted expansion of the privacy concept.

The fact that the right of privacy is "broad enough to encompass a woman's decision whether or not to terminate her pregnancy" provides no authority for the rule that the right limits regulation of abortion facilities to maintenance of sanitary facilities and enforcement of building code standards. This Court's comment on *Roe* v. *Wade* in *Paris Adult Theatre* v. *Slaton,* 413 U.S. 49 (1973) leads to an opposite conclusion. Citing *Roe* and *Griswold* v. *Connecticut,* 381 U.S. 479 (1965), this Court stated that the constitutionally protected privacy of family, marriage, motherhood, procreation and child rearing is concerned "with a protected intimate relationship." *Id.* at 66.

In the same manner in which privacy requires that the abortion decision be unfettered by the existence of criminal abortion statutes, the right of privacy recognized by the *Griswold* Court was broad enough to preclude a Connecticut law which interfered with the decision whether or not to conceive a child. In *Griswold,* this Court stressed that the right of privacy mandated the invalidation of that portion of the law that proscribed the *use,* as opposed to the manufacture, sale, or other distribution of contraceptives. 381 U.S. at 485, 486. Thus, the right of privacy is

not all-encompassing, but has been narrowly drawn by this Court.

In the instant case, a physician and his abortion clinic have been granted shelter under the umbrella of a woman's right of privacy. By invalidating the regulations on the basis of a woman's right of privacy, the Court of Appeals has blunted the real issue of whether an abortion clinic performing numerous first trimester abortions is now beyond the pale of Board of Health supervision. Certainly, requiring an abortion clinic to have a sink or an elevator does not invade any fundamental right of a woman. Indeed, the plaintiff in *Roe* v. *Wade* alleged that she sought an abortion "performed by a competent licensed physician under safe, clinical conditions."

Although this Court took notice of various scientific and medical data in reaching its decision in *Roe*, none of the data demonstrated the safety of first trimester abortions in clinics where health and sanitation requirements are not enforced. The Seventh Circuit has seriously erred in resolving the empirical uncertainty of the safety of unregulated clinics in the name of a woman's right of privacy. Given the graveness of the Court of Appeals' assumption and the importance of the scope of the right of privacy, this case requires review by this Court.

II.

RESPONDENTS ARE IN COMPLIANCE WITH THE CHICAGO BOARD OF HEALTH REGULATIONS. THEREFORE, THIS CASE PRESENTS NO CASE OR CONTROVERSY.

Respondents do not argue that the challenged regulations present an actual threat of harm to them. Since the Friend-

ship Clinic is an abortion facility in full compliance with the Board of Health Regulations, the claims of respondents do not present a real case or controversy. Moreover, any fear of arrest is plainly fictional. Section 9-5 of Chapter 9 of the Municipal Code clearly specifies arrest as the penalty for one who "violates any health provision of this code." "This code" plainly refers to the Municipal Code of which the regulations are not a part.

Furthermore, a party may not seek vindication for the constitutional rights of others. *Moose Lodge* v. *Irvis*, 407 U.S. 163 (1972); *Sierra Club* v. *Morton*, 405 U.S. 727 (1972). The Court of Appeals erred in granting respondents vicarious standing to assert their potential patients' rights of privacy.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in the petition, a writ of certiorari should issue to review the judgment of the Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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